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THE HONORABLE SHARON L. GLEASON

8 UNITED STATES DISTRICT COURT  
9 FOR THE DISTRICT OF ALASKA

10 UNITED STATES OF AMERICA,  
11 Plaintiff,  
12 vs.  
13 JOHN PEARL SMITH, II,  
14 Defendant.

No. 16-CR-00086 SLG-DMS  
MOTION TO STAY FURTHER  
PROCEEDINGS PENDING A  
DECISION IN *UNITED STATES V.  
TAYLOR*, SUP. CT. #20-1459

15 **MOTION**

16  
17 Comes now John Pearl Smith, II, through counsel and moves to stay further  
18 proceedings until the United States Supreme Court issues a decision in *United States v.*  
19 *Taylor*, Supreme Court #20-1459.

20 **GROUND FOR RELIEF**

21 To assert federal jurisdiction on the two charged homicides, the Government  
22 posited two theories under 18 U.S.C. §924(c) and (j). In Counts 3, 4, 5 and 6, the  
23 Government alleged that Mr. Smith killed C.D. and B.G. during and in relation to a “crime  
24 of violence” - the attempted Hobbs Act Robbery charged in Count 1. The Government’s  
25

MOTION TO STAY- 1

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1 second basis for federal jurisdiction, set forth in Counts 7 and 8 is the allegation that Mr.  
2 Smith was attempting to possess a controlled substance with intent to distribute – as  
3 charged in Count 2 - and during that crime he killed C.D. and B.C. Dkt. 102.

4 On January 1, 2020, Mr. Smith moved to dismiss Counts 3, 4, 5, 6 arguing that an  
5 attempted Hobbs Act robbery is not a crime of violence. Dkt. 623. He pointed out that  
6 Count 1 of the Superseding Indictment alleges:

7 On or about June 5, 2016, within the District of Alaska, the defendant,  
8 JOHN PEARL SMITH II, did **attempt** to obstruct, delay, and affect  
commerce and movement of articles and commodities in such commerce,  
9 by robbery as that term is defined in Title 18, United States Code, Section  
1951(b)(1), to wit, the defendant knowingly and unlawfully **attempted to**  
10 take from the person and presence of another, by means of actual and  
threatened force and violence, controlled substances and/or proceeds from  
11 their sale, an activity that affects interstate commerce.

12 Dkt. 102 [Emphasis added]. On February 7, 2020, this Court denied Mr. Smith's motion.  
13 Dkt. 672.

14 On July 2, 2021, the United States Supreme Court granted certiorari in *United*  
15 *States v. Taylor*, #20-1459.<sup>1</sup> The question presented is: "Whether 18 U.S.C. 924(c)(3)(A)'s  
16 definition of 'crime of violence' excludes attempted Hobbs Act robbery, in violation of 18  
17 U.S.C. 1951(a)." Mr. Smith's case presents an identical question in Counts 3, 4, 5, and 6.

18 "A trial court may, with propriety, find it is efficient for its own docket and the  
19 fairest course for the parties to enter a stay of an action before it, pending resolution of  
20 independent proceedings which bear upon the case." *Leyva v. Certified Grocers of Cal.,*  
21 *Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979). It is not unusual for a district court to grant a  
22

23  
24 <sup>1</sup> Decision below published at 979 F.3d 203 (2020).  
25

MOTION TO STAY- 2

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1 stay pending a determinative decision by the United States Supreme Court. See *United*  
2 *States v. Clark*, No. 87 CR. 49 (JFK), 1987 WL 13273, at \*1 (S.D.N.Y. June 30, 1987).

3 Counts 3, 4, 5 and 6 of the indictment are now in doubt. If Mr. Smith were tried  
4 and convicted on the present indictment and the Supreme Court later determines an  
5 attempted Hobbs Act robbery is not a crime of violence, those four counts would have to  
6 be dismissed. And given the substantial prejudice of trying those counts with the remaining  
7 13 counts, any other convictions would have to be reversed as well. The jury will have been  
8 instructed that Mr. Smith “committed a crime of violence” in the four primary and  
9 overlapping homicide counts. Just the multiplicity of counts and the use of the term  
10 “crime of violence” demonstrates the unfair prejudice to Mr. Smith if the jury considers the  
11 other 13 charges in the Indictment with the four counts now in doubt.

12 It would waste of scarce CJA and judicial resources and be burdensome to the  
13 parties if the Court engaged in additional pretrial proceedings, summoned a jury and took  
14 evidence in a lengthy trial where four primary counts are in doubt. If a stay is not granted  
15 now, and the Supreme Court determines that attempted Hobbs Act robbery is not a crime  
16 of violence, the conclusion of this litigation might be attenuated far beyond the length of  
17 any stay. For example, if a defense favorable decision were rendered in *Taylor* during  
18 trial, before sentencing or while any conviction were on appeal, a mistrial or new trial  
19 would likely be the result. While the defense is mindful of the victim’s interest in having  
20 trial completed this fall, certainly it would be far more difficult for the victim’s families if  
21 the matter had to be tried twice. Such a possibility can be avoided by entering a stay now.  
22

23  
24 If this case proceeded to trial on the present indictment, and Mr. Smith was  
25 convicted and sentenced, an appeal would be certain. If the Supreme Court finds that

MOTION TO STAY- 3

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attempted Hobbs Act robbery is not a crime of violence, a retrial would also be certain. Thus, there is no set of circumstances where the final resolution of this matter can be made before the Supreme Court renders a decision in *Taylor*.

The Supreme Court's term ends every year by July 1. Mr. Smith is seeking a stay that, at the very latest, will expire by July 1, 2022, by which time the Supreme Court will have decided *Taylor*. Once decided, the Court and the parties can confidently proceed with pretrial preparation with no further uncertainty about the propriety of Counts 3, 4, 5 and 6.<sup>2</sup>

Accordingly, Mr. Smith asks that this Court stay any further proceedings and set the matter for a status conference immediately after any opinion in *Taylor* is issued.

DATED this 7th day of July 2021.

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## **CERTIFICATE OF SERVICE**

I, SUZANNE LEE ELLIOTT, certify that on, I filed foregoing document with the United States District Court's Electronic Case Filing (CM/ECF) system, which will serve one copy by email on Assistant United States Attorneys KAREN VANDERGAW, JAMES KLUGMAN, and CHRISTOPHER D. SCHROEDER.

<sup>2</sup> There is no improper strategic reason on Mr. Smith's part in moving for a stay. He brought this issue to the Government and the Court's attention eighteen months ago.

## MOTION TO STAY- 4

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**MOTION TO STAY- 5**

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